Federal Communications Commission
Washington, D.C. 20554

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Emmis Austin Radio Broadcasting Company, LP
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1776 K Street, NW
Washington, DC 20006

In Re: KLBJ(AM), Austin, Texas
Facility ID No. 65791
BTC-20190618AAS

Application for Voluntary Transfer of Control

Dear Counsel:

We have before us the above-captioned application (Application) of Emmis Austin Radio Broadcasting Company, LP (the Partnership or Petitioner)[1] for authority to transfer control of its licensed stations geographically located in the Austin, Texas Nielson Audio Market (Austin Market).[2] The uncontested Application is accompanied by a request for waiver (Waiver Request) of Note 4 to Section 73.3555 of the Commission's rules (Rules).[3] For the reasons set forth below, we grant the Waiver Request and the Application.

Background. STI Telecable, Inc. (STI) and LBJ Broadcasting Company, LP (LBJ) formed the Partnership in 1997- under the name "LBJS Broadcasting Company LP"- to operate five radio stations in the Austin Market.[4] STI and LBJ owned 33.3 percent and 66.7 percent interests in the Partnership, respectively.[5] In late 2002, the Commission approved the transfer of control of the licenses held in the

[1] *See* File No. BTC-20190618AAS, *et al*. Emmis Austin Radio Broadcasting Company, LP filed the Application on June 18, 2019, and amended it on July 31, 2019. The staff accepted the Application for filing on August 21, 2019. *See Broadcast Applications,* Public Notice, Report No. 29555 (Aug. 21, 2019). The Application is uncontested.

[2] These stations include: KLBJ(AM), Facility ID No. 65791, Austin, Texas; KLBJ(FM), Facility ID No. 65792, Austin, Texas; KGSR(FM), Facility ID No. 23604, Cedar Park, Texas; KLZT(FM), Facility ID No. 9973, Bastrop, Texas; KROX(FM), Facility ID No. 54659, Buda, Texas; KBPA(FM), Facility ID No. 41213, San Marcos, Texas; K259AJ, Facility ID No. 82261, Austin Texas; K274AX, Facility ID No. 139278, Austin, Texas.

[3] 47 CFR § 73.3555, Note 4. This uncontested Waiver Request applies to Stations KLBJ(FM), KGSR(FM), KLZT(FM), KROX(FM), and KBPA(FM).

[4] Waiver Request at 2.

[5] *Id*.

Partnership to Emmis Operating Company (Emmis), which acquired a 50.1 percent interest.[6] As part of that transaction, LBJ left the Partnership, STI contributed a sixth radio station that it owned (KEYI-FM (now KBPA(FM)) to the Partnership and STI increased its ownership interest to 49.9 percent.[7] In July 2003, the Partnership was renamed "Emmis Austin Radio Broadcasting Company, LP."[8] Emmis and STI have successfully operated these six stations as a combination since 2003.[9] The transaction proposed in the Application contemplates that STI will purchase Emmis's interests in the Partnership and acquire 100 percent control.[10]

According to BIA Advisory Services, LLC, there are 42 radio stations that are "home" or licensed to communities geographically located in the Austin Market, including each of the radio stations identified in the Waiver Request.[11] Under the Commission's local ownership rules, a licensee in the Austin Market may have an attributable interest in up to seven commercial radio stations, with not more than four being in the same service (AM or FM).[12] Currently, Emmis has a cognizable interest in five FM stations in the Austin Market, one more FM station than is permitted under the Commission's local ownership rules.[13] Notably, common ownership of the six stations was permissible under the local ownership rules in effect in 2003 and the combination was later grandfathered when the local ownership rules were modified.[14] The Commission allows grandfathered combinations to continue as long as the station's licensee does not propose a change that creates a new violation of the ownership rules.[15] If such a change is proposed, then grandfathering terminates and the licensee must come into compliance with the multiple ownership limits of section 73.3555(a) of the Rules.[16] In this instance, a decision to grant the Application at issue would require either a waiver of Note 4 or the Partnership's prior divestiture of one FM station in the Austin Market.

In its unopposed Waiver Request, the Petitioner argues that the unique circumstances of the proposed transaction support a waiver allowing it to transfer control of the grandfathered combination of stations to STI without a divestiture. The Petitioner states that the proposed transaction is not a sale of the Partnership or its Austin stations but more akin to a corporate restructuring since Emmis and STI are

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[6] *Id*. at 2, citing File No. BTC-20030307AAD *et al*. (granted Apr. 25, 2003; consummated July 1, 2003).

[7] *Id*. at 2, citing File No. BALH-20030307AAK (granted Apr. 25, 2003; consummated July 1, 2003).

[8] *Id*. at 2.

[9] *Id*.

[10] *Id.*

[11] Waiver Request at Attachment B, BIA Market and Divestiture Analysis.

[12] *See* 47 CFR § 73.3555(a).

[13] *See supra* n.2.

[14] *See 2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 13620 (2003) ("*Ownership Order*"), *aff'd in part and remanded in part, Prometheus Radio Project, et al. v. FCC*, 373 F.3d 372 (3rd Cir. 2004), *cert. denied*, 125 S. Ct. 2902 (2005). In the *Ownership Order*, the Commission grandfathered existing ownership combinations that had been authorized under prior rules. *See Ownership Order*, 18 FCC Rcd at 13807-09, paras. 482-486.

[15] For example, the Commission prohibits the sale of existing combinations that would violate the local radio ownership rule or the local or national television ownership rules. Similarly, modification of the facilities of a station in a grandfathered combination is prohibited if the proposed modification would create a new violation of the ownership rules. *See* 47 CFR § 73.3555(a), (b), (e) and Note 4.

[16] *See* 47 CFR § 73.3555, Note 4.

nearly co-equal partners and fully attributable interest holders.[17] The Petitioner maintains that application of Note 4 would impose substantial and unnecessary hardship on the partners, who would likely be required to accept a "fire sale" return for one of the Partnership's valuable FM stations due to the involuntary nature of the divestiture.[18] The Petitioner further argues that a forced sale would negate the efficiencies of the cluster's combined operation and be disruptive to employees.[19] Additionally, the Petitioner states that a forced divestiture would likely not result in a new player entering the market because in-market groups would be more willing to pay a higher price for the station than the price a new entrant would be willing to pay for a stand-alone station. Thus, the Petitioner argues that the "hoped for gain in diversity" from applying Note 4 does not outweigh the negative consequences of a forced divestiture of a stand-alone FM station.[20] The Petitioner maintains that continuation of grandfathering will serve, not harm the public interest, by allowing the sustained operation of a thriving cluster, one which offers market listeners diverse and distinct formats by one of its long-standing owners.[21]

Discussion. We grant Petitioner's request for waiver of the Commission's local ownership rules. The Commission's rules may be waived for good cause shown.[22] A waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[23] When evaluating a request for waiver of the local ownership rules, the Commission weighs public interest concerns on a case-by-case basis to ensure that the waiver does not unduly compromise the Rules' purpose which is to foster viewpoint diversity and competition.[24]

Grandfathered combinations, by definition, exceed the numerical ownership limits set by the Commission to preserve competition and diversity in local radio markets. Note 4 of section 73.3555 of the Rules requires licensees proposing to assign or transfer control of such grandfathered combinations to come into compliance with the local ownership rule at the time the transfer of control or assignment application is filed.[25] Here, because more than 50 percent of the voting rights in the Partnership are being transferred, prior Commission approval is required on a "long form" FCC Form 315 application as well as simultaneous compliance with the numerical ownership limits of section 73.3555(a) of the Rules.[26] We find that strict application of this rule is not warranted here given the unique circumstances underlying the Partnership's Waiver Request and that granting the Request will serve the public interest. Additionally,

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[17] *See* Waiver Request at 4. The Commission passed upon Emmis and STI when it approved the Partnership's ownership structure 16 years ago. *See supra* notes 6, 7.

[18] Waiver Request at 5.

[19] *Id*.

[20] *Id.* at 5-6.

[21] *Id.* at 4, 6.

[22] 47 CFR § 1.3.

[23] *See Northeast Cellular Telephone Co. v. F.C.C.,* 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. F.C.C.*, 418 F. 2d 1153, 1157-59 (D.C. Cir. 1969) ("*WAIT Radio*")); *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008). *See also* 47 CFR § 1.3 (stating that rule provisions may be waived "for good cause shown"). The Commission declined to adopt any specific waiver criteria relating to radio station ownership in the *Ownership Order,* but stated that "[p]arties who believe that the particular facts of their case warrant a waiver of the local radio ownership rule may seek a waiver under the general 'good cause' waiver standard in our rules." *See Ownership Order*, 18 FCC Rcd at 13746-47 (citing 47 CFR § 1.3).

[24] *See, e.g.*, *Multimedia, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 4883, 4884-4885 (1995).

[25] 47 CFR § 73.3555, Note 4.

[26] FCC Form 315, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License (June 2014) (FCC Form 315); 47 CFR § 73.3555(a).

we find that this waiver will not undermine the purpose of Note 4 or unduly compromise viewpoint diversity and competition in the Austin Market.

In reaching our conclusion, we find several facts to be relevant. Significantly, Emmis is selling its Partnership interest to its minority partner, not to an unrelated third party. The minority partner, STI, currently has a 49.9 percent ownership interest and has been involved in the day-to-day administration, management and operation of the Partnership and grandfathered stations since the Partnership was formed in 1997.[27] STI's increase in ownership from 49.9 percent to above 50 percent represents a *de minimis* change based on the overall structure of the Partnership.[28] Although there will be a transfer of ultimate control, we conclude the unique nature of the relationship between these parties and STI's long history with the stations favors grant of the waiver. Also, we find no indication in the record that Emmis or STI is attempting to circumvent the Commission's local ownership rules with the proposed transaction. In fact, it appears that this transaction is part of Emmis's ongoing efforts to divest its radio stations.[29] A sale of its interest to its existing 49.9 percent minority partner seems to represent an option that will ensure continued operation of the stations and serve the public interest.

We also believe the structure of the Austin Market favors grant of the waiver. The Austin Market is already highly diverse in terms of ownership and programming, with at least 21 owners and 28 distinct program formats.[30] The Partnership is not acquiring any new stations as part of this transaction and no new owners or principals are being introduced or considered. Based on the structure of the market, we do not believe that continuation of the grandfathered combination as part of the proposed transaction will be anticompetitive, nor will it inhibit viewpoint diversity in the Austin Market. Further, we find that the

[27] *See* Waiver Request at 2-3.

[28] Although Emmis holds the majority 50.1 percent interest in the Partnership, STI currently has a significant measure of control with two of the five board seats and substantial blocking rights. For example, Emmis may not approve any of the following matters without the approval of at least one STI director: (1) any sale or transfer of a radio station owned by the Partnership; (2) mergers or consolidations; (3) the sale, transfer or lease of all or substantially all of the Partnership's assets; (4) entering into local marketing agreements; (5) guaranteeing security interests or other liens of the Partnership's assets; and (6) any action by the Partnership to dissolve, liquidate, or wind up the business and affairs of the Partnership. *See* Waiver Request at 3.

[29] On July 1, 2019, Emmis announced that it would sell its New York City stations, WQHT(FM) and WBLS(FM), to Mediaco Holding for $91.5 million, a $5 million promissory note, and a 23.72% stake in the new company. *See* Emmis Forms New Mediaco Holding Company With Standard General, To Transfer WBLS And WQHT (Hot 97)/New York To New Entity, *All Access Music Group* (July 1, 2019), https://www.allaccess.com/net-news/archive/story/187565/emmis-forms-new-mediaco-holding-company-with-stand. In June 2019, Emmis announced that it would sell its controlling stake in its Austin stations to their minority partner STI Telecable Inc. *See* Emmis Exits Austin Market With Sale To STI Telecable, *Insideradio.com* (June 10, 2019), http://www.insideradio.com/free/emmis-exits-austin-market-with-sale-to-STI-telecable/article_2b03cce8-8b9b-11e9-8c44-03931d1486fa.html (stating that, with the sale, Emmis is focusing on transitioning to "new areas of growth"). On January 30, 2018, Emmis announced it would leave the St. Louis market, selling KSHE(FM) and KPNT(FM) to Hubbard Broadcasting, and KFTK(FM) and KNOU(FM) to Entercom. *See* Joe Holleman, Emmis Communications Leaving St. Louis Market with Sale of KSHE, 3 Other Radio Stations, *stltoday.com* (Jan. 31, 2018), https://www.stltoday.com/business/local/emmis-communications-leaving-st-louis-market-with-sale-of-kshe/article_d16c9f60-2700-53da-a75c-be3a3d46cf59.html. On May 9, 2017, Emmis announced that it would sell KPWR(FM) to The Meruelo Group for $82.75 million. *See* Lance Venta, Emmis Sells Power 106 Los Angeles To Mereulo Group, *Radio Insight* (May 9, 2017), https://radioinsight.com/headlines/117804/emmis-sells-power-106-los-angeles-mereulo-group/. On October 12, 2016, Emmis announced that it would sell its radio stations in the Terre Haute cluster to Midwest Communications and DLC Media. *See* Emmis Announces Agreement to Sell Terre Haute Radio Stations in Three, Related Transactions - Emmis Communications, *Emmis Communications* (Oct. 12, 2016), http://www.emmis.com/emmis-announces-agreement-sell-terre-haute-radio-stations-three-related-transactions/.

[30] *See* Waiver Request at Attachment A, Austin, Texas BIA Report.

benefits ultimately derived in this case, i.e., the continuity of management and operations of a well-established Partnership and thriving cluster of radio stations, support the grant of a limited waiver to enable Emmis to transfer control of the Partnership and grandfathered Austin stations to STI without divestiture.

Conclusion and Ordering Clauses. In view of the above, we find that special circumstances warrant a waiver of the Commission's local ownership rule and that such waiver will serve the public interest.

Accordingly, IT IS ORDERED, that the request by Emmis Austin Radio Broadcasting Company, LP for a waiver of the local radio ownership rule, 47 CFR § 73.3555, Note 4, IS GRANTED.

IT IS FURTHER ORDERED, that the Application, File No. BTC-20190618AAS, *et al*, filed on June 18, 2019, IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau